

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING
September 1, 2009**

Place: Room 206
Town Hall

TIME: 8:27 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Bigelow, Spain, Hutchison, Grimes, Riccardo

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat

PUBLIC HEARING

Chairman Conze read the following agenda item:

Special Permit Application #170-B/Site Plan, Tasti D-Lite, Noroton Heights Shopping Center, 380 Heights Road. Proposing to establish an ice cream shop within the northernmost space within the existing building and place two associated outdoor tables and eight outdoor chairs. The subject property is located on the north side of Heights Road approximately 185 feet east of its intersection with Hollow Tree Ridge Road, and is shown on Assessor's Map #75 as Lots #22, #23, #24, in the DC Zone.

Aldo Criscuolo explained that he plans to open up the Tasti D-Lite store within Noroton Heights Shopping Center. He said that technically Tasti D-Lite serves a frozen dessert treat. It is not ice cream because it does not contain the minimum 10% butter fat, although it is frequently referred to as being ice cream. Mr. Criscuolo explained that he operates the Heights Pizza which is in a nearby store within the shopping center and thus will have access to the trash dumpster used by his existing restaurant. He said that deliveries to the Tasti D-Lite shop will be easy. He explained that they request the installation of two (2) tables on the covered sidewalk just outside the store. There would be eight (8) chairs accompanying those two tables on the outside sidewalk. Mr. Criscuolo explained that they plan to stay open until 10:00 P.M. on most nights during the summer. Commission members asked about the storage of the outside chairs and tables during the off-season. Mr. Criscuolo said that those tables and chairs can and will be stored off-site.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mrs. Grimes, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

GENERAL MEETING

Discussion, deliberation and possible decisions regarding:

Special Permit Application #255/Site Plan Application #270, Land Filling & Regrading Application #227, 333 West Avenue Associates, LLC, 329-333-339 West Avenue. Proposing to merge five properties and construct eight single-family residences in a "Single-Family Open Space

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Development” with associated drainage, open space, and parking areas, and perform related site development activities. *DECISION DEADLINE: SEPTEMBER 15, 2009.*

The following motion was made: That the Commission waive the process of reading the draft Resolutions aloud because each member has had an opportunity to read the drafts in preparation for the meeting. The motion was made by Mr. Bigelow, seconded by Mrs. Grimes and unanimously approved.

Mr. Ginsberg read through and summarized the drafted conditions of approval. Mr. Spain discussed the condition about the 12 month period to analyze the impacts of any storms upon the proposed drainage system. He wondered what would happen if there are no major storms that happen within a 12 to 18 month period. He suggested modifying the stipulation to make sure that a large storm was included within the analysis. Mr. Bigelow said that the conditions should be clarified to require that the developer re-design and correct any problems with respect to the drainage that do become apparent. Other Commission members agreed on those recommended changes.

Mr. Hutchison suggested that finding number 2 also be written in as a condition to make sure that there is an elimination of the right-of-way from Patton Drive into the subject property. Other Commission members agreed. Mr. Spain suggested a condition about a safety fence around the basins because the fence would provide additional safety when the basin is full of water. Other Commission members agreed that a fence should be required initially, but if experience indicates that it is not necessary, the applicant could return to the Planning & Zoning Commission to seek removal of the fence. Other members agreed with the suggestion.

The following motion was made: That the Commission adopt the following revised Resolution to approve the application subject to the conditions and stipulations as detailed. The motion was made by Hutchison, seconded by Mr. Bigelow. All voted in favor except for Mrs. Riccardo who abstained because she was not present for the public hearing regarding this matter.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Special Permit Application #255/Site Plan Application #270,
Land Filling & Regrading Application #227

Street Address: 329-333-339 West Avenue
Assessor's Map #48 as Lots #37, #38, #39, #41, and #42

Name and Address of Property Owner: 333 West Avenue Associates, LLC
c/o John D. Hertz
162 Bouton Street
Norwalk, CT 06854

Name and Address of and Applicant: Wilder G. Gleason, Esq.
Applicant's Representative: Gleason & Associates, LLC
455 Boston Post Road, Suite 201

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Darien, CT 06820

Activity Being Applied For: Proposing to merge five properties and construct eight single-family residences in a "Single-Family Open Space Development" with associated drainage, open space, and parking areas, and perform related site development activities.

Property Location: The subject properties are located on the south side of West Avenue approximately 185 feet west of its intersection with Patton Drive.

Zone: R-1/3 and R-1/5 Zones

Date of Public Hearing: June 23, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: June 11 & 18, 2009

Newspaper: Darien News-Review

Deliberations held on: July 7, 2009

Date of Action: September 1, 2009

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:

September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 404j, 850, 1000, 1020 and 1052 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant and applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to merge five properties and construct eight single-family residences in a "Single-Family Open Space Development" with associated drainage, open space, and parking areas, and perform related site development activities. Three of these five properties in the recent past had single-family residences on them. Those three residences have since been razed and removed from the properties. The subject properties are served by public water and public

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sewer. The subject five properties total 1.86 acres, and as noted by the applicant's soil scientist, there are no inland wetlands on the subject properties.

2. All of the residences will be served by a private one-way driveway in from West Avenue. There is no access proposed from Patton Drive or other adjacent properties. As part of this application, the applicant's representative noted that the existing right-of-way from Patton Drive will be terminated/extinguished.
3. The applicant represented that none of the eight proposed single-family residences would have a basement. All will be slab-on-grade construction except houses 6, 7, and 8 which will have crawl spaces. It was noted that each of the eight houses is proposed to be a two-bedroom residence, with the flexibility of converting some of the interior space into a third bedroom.
4. A related application to modify the Zoning Regulations was adopted by the Planning and Zoning Commission in April 2009. That Zoning Regulation allowed the establishment of Single-Family Open Space Developments under Sections 404j and 1052. This is an application pursuant to those Regulations.
5. The Commission notes that for this Single-Family Open Space Development, this project's landscaping design needs to be implemented properly; and the Commission further believes that there should be no pillars and no plaques at the entrance. The pillars should be deleted from the project, so that the plan better emulates the look of the surrounding single-family neighborhood per Section 1052.7 of the Regulations.
6. The Architectural Review Board (ARB) approved these house designs as part of ARB #11-2009 on May 19, 2009. The Commission takes note of the fact that three separate architectural designs are being used for the eight proposed single-family residences. The Commission finds that the architectural design complies with Section 1052.7 of the Zoning Regulations, and that the design meets the background and purposes outlined within Section 1052.1.

DRAINAGE:

7. In June 2009, the Planning & Zoning Commission adopted Regulation amendments relative to Stormwater Management. This application was submitted prior to that date, and is not subject to those Regulations. However, the applicant submitted a thorough drainage report and drainage design plan to address the known drainage issues in and around the site, and this drainage plan conforms to the standards of the new drainage regulations. The Commission hired Tighe & Bond, an outside engineering consultant to review the report at the applicant's expense. The Tighe & Bond engineer submitted memos dated June 15 and June 22, 2009, and testified at the June 23, 2009 public hearing. At the public hearing, he concurred with the applicant's engineer.
8. The Commission believes that there should be some kind of monitoring procedure for the proposed drainage system. The Commission acknowledges that if the drainage system does not work, it will be the developer or homeowner's association responsibility to correct it. It is essential to ensure proper functioning of the stormwater management system both during and after construction, with particular attention paid to the on site detention of storm water and the proposed bio-retention basin.

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9. The Commission notes that requiring certifications and as built drawings of the drainage system will be critical. Monitoring will be necessary, once the new drainage system is installed and that the construction will need to be carefully performed to avoid overflowing any water on to neighboring land. The benefit of having a coordinated community of houses is that the drainage system is designed and coordinated for the entire site rather than on an individual house and lot basis.
10. The Commission notes the need for the applicants to file a document outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage system, its design objectives and the need to maintain said facilities to minimize any potential downhill impacts.
11. The association of private homeowners is responsible for taking care of the common grounds and maintaining the common drainage system.
12. The application has been reviewed by the Commission and, as required to be modified herein, is found to be in general compliance with the intent and purposes of Sections 850 and 1000.
13. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
14. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
15. The Special Permit application and associated site plan and detailed information has been reviewed by the Commission and, subject to the required modifications discussed herein, is in general compliance with the intent and purposes of Sections 400, 404j, 1000, 1020 and 1052.
16. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application, as amended herein, is in harmony with the orderly development of the district in which it is located.
17. The location and nature of the proposed use is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
18. The design, location, and specific details of the proposed use and site development, as modified and approved herein, will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
19. The elements of the Site Plan, submitted as part of the application, **AS REQUIRED TO BE MODIFIED HEREIN**, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

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NOW THEREFORE BE IT RESOLVED that Special Permit Application #255/Site Plan Application #270, Land Filling & Regrading Application #227 are hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

A. Construction and related activity shall be in accordance with the following plans, as required to be modified herein:

- Westerly Court, 333 West Ave, Darien CT, Architectural Drawings, by LaVigna Associates, dated 6/23/2009, Drawings #1-2, C1-C2, V1-V2, G1-G2 (these supersede the 5/15/2009 plans)
- Westerly Court, Darien CT Site Drawings, by Redniss & Mead, dated 5/15/09:
 - Zoning Location Survey, dated 05/15/2009;
 - Grading Plan depicting 333 West Avenue, Drawing No. SE-1;
 - Utility Plan depicting 333 West Avenue, Drawing No. SE-2;
 - Sediment & Erosion Control Plan depicting 333 West Avenue, Drawing No. SE-3;
 - Cross Sections depicting 333 West Avenue, Drawing No. SE-4;
 - Notes & Details depicting 333 West Avenue, Drawing No. SE-5;
 - Details depicting 333 West Avenue, Drawing No. SE-6.
- Landscape Plan Westerly Court, 333 West Avenue by Jay Fain & Associates, LLC, dated 5/07/09, Sheet L-1.
- Planting Details Westerly Court, 333 West Avenue by Jay Fain & Associates, LLC, dated 5/07/09, Sheet L-2.
- Hardscape Details Westerly Court, 333 West Avenue by Jay Fain & Associates, LLC, dated 5/07/09, Sheet L-3.

Plans shall be revised per Conditions B, C, D, E, and F below.

- B. Prior to preparing the final lot line revision mylar, lot numbers and street addresses shall be verified with the Assessor. Those shall be included on the final mylar of the lot line revision (the combination of five parcels into one 1.86 acre parcel) map for filing in the Darien Land Records.
- C. During the public hearing, Commission members discussed the proposed driveway, and noted the importance of the proposed porous asphalt for drainage purposes. The Commission hereby requires the use and maintenance of porous asphalt to minimize the amount of storm water runoff. That requirement shall be noted on the revised plans, and a document filed in the Darien Land Records so that the future property owners are aware of this binding requirement. This shall limit future repaving operations to porous materials only. As per Joe Canas' June 22, 2009 letter, the underdrain valve shall be placed in a smaller valve box as opposed to a manhole.
- D. The Landscape Plan shows entry and exit piers with site identification signage, and a stone wall w/sub-piers and wooden gates. The Commission hereby requires that the plans be modified to:
1. eliminate the pillars (noted on the plans as 4'-high piers) near the entrance and exit;
 2. eliminate the wording "Westerly Court", and only have on the stone wall the street address(es) as assigned by the Assessor as part of Condition B, above.
 3. since this project does not contain a private or public street, no street sign is allowed.

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- E. Per the Fire Marshal's comments, a second fire hydrant shall be located on West Avenue by the driveway entrance (at the westerly end of the property). The water main shall be a minimum 8" loop back onto West Avenue. The plans shall be revised accordingly.
- F. Because of safety concerns, the Commission hereby requires that a four foot high fence shall be installed around the proposed bio-retention basin. This shall be shown on the revised plans. The applicant may return one year or more after the fence is installed for a request to remove that fence based upon experience. Final review and action on that fence removal may be made by the Planning and Zoning Director, or the Commission if the Director deems appropriate.
- G. No access from Patton Drive is shown on the plans and none is hereby approved. As part of this application, the applicant's representative noted that the existing right-of-way from Patton Drive will be terminated/extinguished. A release/elimination of that right-of-way shall be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit for the first residence.
- H. Per Section 1052.7 of the Darien Zoning Regulations, "subsequent to Special Permit approval, any significant modification to the architectural plans of an individual dwelling approved by the Commission shall be reviewed and approved by the Architectural Review Board prior to issuance of a Zoning Permit for such modifications." There are sidewalks on the north side of West Avenue, across the street from the proposed houses within this development. There are no sidewalks on this portion of the south side of West Avenue. In keeping with the character of the area, no new sidewalk is shown on the proposed plans and none is required.
- I. As proposed by the applicant, the Commission hereby requires that none of the residences can have a basement.
- J. The Commission notes that no Site Lighting Plan was submitted for this application. In order that this development better "fit in", the Commission hereby limits the lighting on-site to that lighting typically associated with a single-family residence. This would be lighting on the residences. No other lighting on light poles or bollard lighting is hereby approved. Any such request for additional lighting will require an amendment of this Special Permit and Site Plan approval. In an email from the applicant's representative dated June 23, 2009, it is noted that exterior lighting will be limited to normal household fixtures side mounted to doors or overhead on porches. No street lighting, walkway lighting or spotlights are proposed, so that the residential character of the neighborhood can be preserved.
- K. The applicant has proposed that all of the buildings will be served by a private driveway and not a street. Since there is no new public or private road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.

DURING CONSTRUCTION:

- L. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the

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sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- M. Once the foundation of each structure has been installed, the applicant shall submit an 'as built' survey to verify compliance with the setback requirements and this approval.
- N. A construction phasing plan shall be submitted to the Planning and Zoning Department for review and action by the Planning and Zoning Director prior to the issuance of any Zoning or Building Permits. An important aspect of the phasing is to include the storm water detention drainage system in the early part of the project. This will protect the neighbors and the applicant while the project is being built. It will allow the Planning and Zoning Department to observe the progress of the subsurface structure of the drainage system. The phasing plan must also ensure the safety of residents who move into a portion of the development during the construction process (before all of the units have been completed). All aspects (including but not limited to parking, drainage, landscaping, utilities, access and egress, etc) of the entire phase must be completed before any units within the phase are eligible for occupancy. Detailed sediment and erosion control plans as well as soil stabilization and replanting plans for each phase are needed.
- O. The revised Landscape Plan and Planting Details Plan are an integral part of this approval. No deviations from that plan are allowed. If a tree dies, it shall be replaced as quickly as possible. Any trees that are not replaced are a violation of this approval.
- P. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring. The Commission notes that the applicant is hoping to have natural gas lines extended to serve this area.
- Q. Per Section 1052.3 of the Regulations, the required usable open space area(s) shall be properly and formally demarked and vegetated. This shall be accomplished prior to the issuance of the first of the Certificates of Occupancy. An Open Space Declaration/easement shall be filed in the Darien Land Records prior to the issuance of a Zoning Permit for any of the proposed residences. The Open Space Declaration/easement shall include the provisions of Section 1052.3 within it, and be consistent with that Section of the Zoning Regulations.

DRAINAGE:

- R. Prior to the issuance of a Zoning Permit for the first house, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department and/or the Darien Land Records. The Drainage Maintenance Plan shall require the property owner(s) and all subsequent property owners of 333 West Avenue to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work.

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- S. Rough site work for the project may commence once the sediment and erosion controls and other environmental protection measures are in place. Around the work area for each building or group of buildings that are being constructed, the storm water runoff must be addressed on a temporary, during construction, basis. This includes limiting the potential for erosion, capturing sediment that does get created, and providing for the flow of storm water in a manner that will not create any problems for adjacent or downstream properties.
- T. Prior to issuance of the first Certificate of Occupancy for this project, the applicant's engineer shall provide a certification that the stormwater management system is installed in full compliance with the approved plans.
- U. After the first significant storm (a two-year storm or greater), a report from the applicant's professional engineer shall be submitted to the Planning & Zoning Department stating whether the stormwater system functioned as designed. This will allow the Commission to determine if the proposed weir does not function as required in such a storm event.
- V. The applicant's engineer shall monitor the performance of the entire drainage system, with particular attention to the bio-retention basin, throughout the construction of the project and during a twelve month period after the project is completed (the occupancy of the eighth house) or control of the property is transferred by the applicant to the condominium association, whichever comes first. Each month after completion, a written report shall be submitted to Planning & Zoning Department documenting the performance of the system. Should the bio-retention basin or any portion of the drainage system not perform satisfactorily to full design specifications, the applicant shall implement corrective measures to ensure proper functioning of the system.
- W. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible. The applicant is responsible for maintenance until twelve months after the last (eighth) house has received a Certificate of Occupancy.
- X. A certification shall be submitted for each residence confirming that the final building height of the buildings as constructed.
- Y. A final "as-built" survey is hereby required to certify that all regrading, construction, drainage structures and site improvements are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that all of the work has been fully and properly completed in accordance with the approved plans.
- Z. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.

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AA. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, a permit from DPW for the new curb cuts on West Avenue (a Street Opening Permit). Permits from the Fire Marshal will be needed to remove underground oil tanks, to install any new oil tanks, and for any above-ground or underground propane tanks.

BB. This permit shall be subject to the provisions of Sections 858, 1009, and 1025 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within two years of this action (August 31, 2012). This may be extended as per Sections 858, 1009 and 1025.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void. All completed requirements and materials: the revised plans; the Open Space Declaration/easement; document regarding limits on the driveway resurfacing; final mylar reflecting the lot line revisions with Lot numbers, street addresses; and drainage maintenance plan, and Notice of Drainage Maintenance Plan; shall be completed and submitted to the Planning and Zoning Department within 90 days of this action and filed in the Darien Land Records or this approval shall become null and void.

Chairman Conze read the following agenda item:

Subdivision Application #273-C, Coastal Site Plan Review #38-A, Joseph & Varina Steuert, 27 Driftway Lane/25 Old Farm Road. Proposing to subdivide the existing property into two lots with associated open space, and perform related site development activities within a regulated area. *HEARING CLOSED ON JULY 28, 2009. DECISION DEADLINE: OCTOBER 1, 2009.*

Mr. Hutchison said that he had listened to the tape regarding the application and had reviewed all the application materials. He therefore felt qualified to act on the application. Commission members discussed the draft Resolution to approve the project. The following motion was made: That the Commission adopt the following Resolution to approve the application subject to the conditions and stipulations as noted. The motion was made by Mr. Bigelow, seconded by Mrs. Grimes. All voted in favor of the motion except for Mrs. Riccardo who abstained.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Subdivision Application #273-C
Coastal Site Plan Review #38-A

Assessor's Map #65 Lot #32
Street Address: 27 Driftway Lane/25 Old Farm Road

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Name and Address of Property Owner: Joseph & Varina Steuert
And Applicant: 25 Old Farm Road
Darien, CT 06820

Activity Being Applied For: Proposing to subdivide the existing property into two lots with associated open space, and perform related site development activities within a regulated area.

Subject Property: The subject property is located on the north side of Old Farm Road approximately 75 feet north of its intersection with Tokeneke Trail.

Zone: R-1

Date of Public Hearing: July 28, 2009

Time and Place: 8:00 p.m. Room 206 Darien Town Hall

Publication of Hearing Notices

Dates: July 16 & 23, 2009

Newspaper: Darien News-Review

Date of Action: September 1, 2009

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 810 of the Darien Zoning Regulations and all applicable sections of the Subdivision Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans showing the proposed two lot subdivision, and the testimony contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The applicant proposes to subdivide the existing 5+/- acre property with an existing residence into two lots with .5252+/- acres of associated open space, and perform related site development activities within a regulated area. The proposed new building lot will be 1.0013+/- acres with a .2078+/- acre 25 foot wide accessway from Driftway Lane, which will be served by public water and an on-site septic system. The lot with the existing residence will contain 3.3586+/- acres after the subdivision.

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2. In 1985, a similar subdivision was approved by the Planning and Zoning Commission. That approval was never acted upon, and is currently null and void.
3. It was noted that the proposed residence shown on the submitted Site Plan is not the actual residence to be constructed, but rather, is a typical footprint size and location showing what could be developed. The applicant's representatives confirmed during the public hearing that if a bigger footprint or additional impervious surfaces are proposed, the size and location of the proposed drainage facilities will need to be modified accordingly.
4. The Commission notes with respect to the drainage system around the house, the need for the applicants to file a document outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
5. The existing driveway from Old Farm Road to the existing residence will remain as-is. The proposed new driveway from Driftway Lane to the new lot will, at the time that the new lot is developed, require modifications in accordance with the submitted plans and details. It will have curbs as part of the stormwater management plan. The water will be collected from the driveway and directed into underground galleries with an overflow pipe to Driftway Lane.
6. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
7. The proposed activities' potential adverse impacts on coastal resources, as modified within this resolution, are acceptable.
8. The proposed activities, as modified within this resolution, are consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

NOW THEREFORE BE IT RESOLVED that Subdivision Application #273-C and Coastal Site Plan Review #38-A are hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The subdivision shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - Subdivision Map 25 Old Farm Road prepared for Joseph J. Steuert Varina M. Steuert, by William W. Seymour & Associates, dated June 3, 2009.
 - Site Plan, Details & Notes, Joseph & Varina Steuert Proposed 2-Lot Subdivision, by Richard Bennett & Associates, LLC, dated 06/18/09, Sheet No. 1 of 1.
- B. To ensure safety, all construction vehicles must park on-site, rather than on Driftway Lane or Old Farm Road--the streets in front of the subject property.

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- C. All utilities serving these properties shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- D. Since there is no new road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.
- E. In preparing the final mylar, lot numbers and street addresses shall be verified with the Assessor. Those should be included on the final mylar for filing.
- F. The driveway drainage improvements and modifications shall be implemented in accordance with the submitted plans and details, at the time that the new lot is being developed. The Commission notes that although schematic house plans were submitted for the record, there is no condition that said house and/or associated septic system plans must be constructed on the proposed new building lot. As part of the development of the new parcel, a detailed storm water management/drainage plan (which can be the plans with associated drainage reports submitted as part of this application) shall be submitted with any application for Zoning and Building Permits for construction on that lot. Said plan shall be implemented to assure that development will not have any negative impact upon the street or neighboring property(ies).
- G. In accordance with Article IV Section C 1-6 of the Darien Subdivision Regulations, the Open Space shall be subject to an Open Space Declaration that shall be filed in the Darien Land Records concurrent with the filing of the Subdivision Map. The open space parcel will be subject to a restrictive covenant to permanently preserve it as open space, and the wording and language of the conservation easement shall be subject to review and action by the Planning & Zoning Director after consultation with Town Counsel. The open space parcel shall be owned by the owner of the adjoining building lot (shown as Lot 5-B on the plans), but shall be maintained as a separate parcel.
- H. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Site Plan noted in Item A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- I. The applicant must make sure that at all times during the redevelopment of the site, the storm water runoff is properly managed to avoid impacts to the neighbors and the street. This shall include, but not be limited to, making provisions for the diversion of water around disturbed areas, sedimentation prevention and control, temporary artificial and/or vegetative cover to minimize erosion of exposed soils, and speedy restabilization of all disturbed areas.
- J. Prior to the issuance of a Zoning Permit for the proposed residence, a drainage maintenance plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it

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shall be filed in the Darien Land Records by the applicant or property owner. The maintenance plan shall require the property owner of the newly created lot accessed via Driftway Lane and all subsequent property owners of each lot to maintain the drainage facilities per the maintenance plan.

- K. The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- L. A Professional Engineer shall submit certification that the required drainage and driveway improvements, and the drainage system for the new house and other site modifications on the new lot have been properly implemented per the approved plans prior to the issuance of a Certificate of Occupancy of the new residence.
- M. This approval of this subdivision does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. The Commission notes that both a Street Opening Permit from the Darien Department of Public Works and approval for the new septic system from the Darien Health Department will need to be obtained by the property owner prior to any construction.
- N. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the approval as it deems appropriate.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements [the final revised mylar showing the Lot number(s) and street address(es)], shall be submitted to the Planning and Zoning Department for review and signature. The Commission hereby authorizes the applicant up to 120 days from the date of this action to file the map and appropriate deeds in the Darien Land Records or this approval shall become null and void.

Chairman Conze read the following agenda item:

Amendment of Special Permit #39-L(2)/Site Plan #254-A, St. Lukes Episcopal Church, 1842-1864 Boston Post Road. Relocation of existing food assistance program to existing garage/barn, and associated improvements to said garage/barn (replacement of doors, new client entry, new HVAC units, insulation) and perform related site development activities. *PUBLIC HEARING CLOSED ON JULY 28, 2009. DECISION DEADLINE: OCTOBER 1, 2009.*

Mr. Ginsberg reviewed and summarized the draft conditions that are contained within the draft Resolution as distributed. The Commission members briefly discussed the matter and the following motion was made: That the Commission adopt the following Resolution to approve the application

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with the conditions and stipulations as noted. The motion was made by Mr. Bigelow and seconded by Mr. Spain. All voted in favor of the motion except Mrs. Riccardo who abstained.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Amendment of Special Permit Application #39-L(2)
Site Plan Application #254-A

Street Address: 1842-1864 Boston Post Road
Assessor's Map #49 Lots #52, #54, #55, #56

Name and Address of Property Owner: St. Luke's Episcopal Church
1864 Boston Post Road
Darien, CT 06820

Name and Address of Applicant: Wilder G. Gleason, Esq.
And Applicant's Representative: Gleason & Associates, LLC
455 Boston Post Road, Suite 201
Darien, CT 06820

Activity Being Applied For: Relocation of existing food assistance program to existing garage/barn, and associated improvements to said garage/barn (replacement of doors, new client entry, new HVAC units, insulation) and perform related site development activities.

Property Location: The subject property is located on the south side of Boston Post Road, at the southeast corner of its intersection with Ring's End Road.

Zone: R-1 & R-1/2

Date of Public Hearing: July 28, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: July 16 & 23, 2009

Newspaper: The Darien News-Review

Date of Action: September 1, 2009

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of

Action: September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

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- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application consists of relocation of existing food assistance program to existing garage/barn, and associated improvements to said garage/barn (replacement of doors, new client entry, new HVAC units, insulation) and perform related site development activities. The furniture program which used to be operated will be scaled back and only will be for cribs. The proposal is to move the emergency food assistance program into the existing garage/barn. This garage/barn will require improvements so that it is appropriate for the modified use.
2. The Architectural Review Board (ARB) approved this project on July 21, 2009. That approval is hereby incorporated by reference. The applicant will return to the Architectural Review Board for final approval of all aspects of the project as the design of the new structure and details such as materials choice and colors are determined.
3. There are no proposed changes to the activities at the Church. There will be no increase in the intensification of use. At the public hearing, it was noted that an HVAC compressor with screening will be installed, as will two bollards and some planters near the front of the building.
4. During the public hearing, the applicant noted that there would be no food preparation or cooking at Person-to-Person. Although there will be a refrigerator and freezer within the building, most of the food provided to clients is canned goods and boxed items.
5. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
6. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
7. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
8. The nature of the proposed changes and uses are such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

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NOW THEREFORE BE IT RESOLVED that Amendment of Special Permit #39-L/Site Plan are hereby modified and granted subject to the foregoing and following stipulations and understandings:

- A. Construction and other activity shall be in accordance with the plans entitled:
 - Food Pantry (portion of site plan) showing location of existing garage with annotation “Proposed Compressor Pad s/Shrub Surround Screen).
 - Person to Person Food Pantry Concept Design Presentation dated June 4, 2009 (5 pages—3 pages of elevations and two pages of floor plans).
- B. Any expansion of and/or changes to use or uses beyond that specified in this resolution will require prior approval per Section 1000 of the Darien Zoning Regulations.
- C. Since there is no earth disturbance as part of this proposal, no sediment and erosion control measures are needed, and no stormwater management is required as part of this application.
- D. Under Section 909 of the Zoning Regulations, the Commission hereby waives the requirement for a loading zone.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- F. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, approval from the Darien Fire Marshal and Building Official, and from the Darien Sewer Services Department for sewer connection to the structure if applicable.
- G. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within two (2) years of this action (September 1, 2011). This may be extended as per Sections 858 and 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

Chairman Conze read the following agenda item:

Amendment of Business Site Plan #256/Special Permit, Athos Real Estate, 71 Boston Post Road. Proposal to modify previous approval to allow an addition to the existing building, on-site cooking, and the installation of a hood and venting system and perform related site development activities. *HEARING CLOSED ON JULY 28, 2009. DECISION DEADLINE: OCTOBER 1, 2009.*

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The Commission members briefly discussed the draft Resolution to approve the project. The following motion was made: that the Commission adopt the following Resolution to approve the project with the conditions and stipulations as noted. The motion was made by Mrs. Grimes and seconded by Mr. Spain. All voted in favor of the motion except for Mrs. Riccardo who abstained.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Amendment of Business Site Plan #256/Special Permit
Athos Real Estate Inc. (proposed first floor tenant: Chipotle)

Street Address: 71 Boston Post Road
Assessor's Map #12 Lot #40

Name and Address of Applicant & Property Owner: Athos Real Estate, Inc.
93 Boston Post Road
Darien, CT 06820

Name and Address of Applicant's Representative: Amy Zabetakis, Esq.
Rucci Burnham Carta & Carello
30 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposal to modify the previous approval to allow an addition to the existing building, on-site cooking, and the installation of a hood and venting system and perform related site development activities.

Property Location: The subject property is located at the northwest corner formed by the intersection of Boston Post Road and West Norwalk Road.

Zone: SB-E

Date of Public Hearing: July 28, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: July 16 & 23, 2009

Newspaper: Darien News-Review

Date of Action: September 1, 2009

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of
Action: September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

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- the proposed use and activities must comply with all provisions of Sections 670, 900, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The applicant proposes to modify the previous approval to eliminate the drive-up window and the drive-through lane, allow an addition to the existing building, allow on-site cooking, and the installation of a hood and venting system and perform related site development activities. The proposed addition consists of a 246 square foot addition as well as a 126 square foot exterior cooler, which is attached to the building. It was noted that the now proposed tenant would not require a drive-through, and the drive-through would be eliminated from the previously approved plans. The proposed restaurant will also be requesting a wine and beer license from the State of Connecticut Liquor Commission.
2. A previous approval for this project Business Site Plan #256/Special Permit was approved by the Commission on July 1, 2008. That Site Plan showed a shared parking agreement with the adjacent property at 93 Boston Post Road. There will be one apartment on the second floor of the proposed building now under construction, which is not a change from the previous approval.
3. The Zoning Board of Appeals (ZBA) granted a variance for this project on March 19, 2008 as part of Calendar #14-2008. That variance was for parking spaces within 75 feet of the street line and to allow 300 in lieu of 1,200 square feet of minimum indoor space devoted to customer tables and seating area. On July 15, 2009 the ZBA amended that variance to allow the construction of a restaurant with a second floor apartment and parking. That approval is also incorporated herein by reference.
4. The Architectural Review Board (ARB) reviewed and approved the design of the new building as part of ARB #13-2008 on April 15, 2008. That approval is hereby incorporated by reference. Because the proposed addition would not be visible from the street and because it would have the same look as the previously approved building, there is no requirement for further ARB review.
5. At the July 28, 2009 public hearing, it was noted that the possible hours of operation would be 11am-10pm daily. Staff would arrive as early as 8am, and leave as late as 11pm. This is a change of the previously approved hours.

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6. The applicant proposes to utilize the existing Joint Parking arrangement as expressly permitted by Section 905 of the Darien Zoning Regulations. Section 905 reads as follows:

905. Joint Parking

Where two or more different uses occur on a single lot, the total amount of parking facilities to be provided shall be the sum of the requirements for each individual use on the lot, except that the Commission may approve the joint use of parking space by two or more establishments on the same or on contiguous lots, the total capacity of which space shall be less than the sum of the spaces required for each, provided:

- a. The Commission finds that the proposed capacity shall meet the intent of the requirements;*
- b. Approval of such joint use shall be automatically terminated upon the termination of the operation of any of such establishments;*
- c. Legal documentation shall be furnished establishing such rights for the duration of such joint use.*

Such shared parking arrangements shall be limited to use and shall not include shared parking by time.

7. The parking requirements are as follows per Section 904 of the Zoning Regulations:
- Restaurant Use—1 space for each 100 square feet of gross floor area
 - Apartment—At least one space per bedroom with a minimum of 2 ½ spaces per dwelling unit
 - Outdoor tables/seating—no spaces are required for the first sixteen outdoor seats
- The proposed building is 2191+/- square feet, with additional cooler space of 126 square feet, and an overall total of 2,317 square feet, which would require 24 parking spaces for the restaurant use. A total of 27 parking spaces are required for the entire project. The submitted plans propose 33 customer seats inside the building and 16 seats outside the building.
8. The Commission finds that in this case, based on the existing and proposed uses of the two sites (the restaurant and apartment at 71 Boston Post Road and car wash with automobile service at 93 Boston Post Road) and the proposed development plans, that the joint parking arrangement is appropriate and acceptable. This will mean that all future uses of both properties are subject to prior review and action of the Commission.
9. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
10. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
11. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.

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12. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
13. The elements of the Site Plan, submitted as part of the application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Amendment of Business Site Plan #256/Special Permit is hereby approved with conditions, subject to the foregoing and following stipulations, modifications and understandings:

- A. All construction and related activity shall be in accordance with the plans submitted to and reviewed by the Commission, as required to be revised by Condition C, below:
 - Zoning Location Survey Plot Plan Commercial/Residential Mixed Use, prepared for Athos Real Estate, Inc., 71 Boston Post Road, by Rocco V. D'Andrea, Inc., last revised 6-29-09.
 - Development Plan Commercial/Residential Mixed Use, prepared for Athos Real Estate, Inc., 71 Boston Post Road, by Rocco V. D'Andrea, Inc., last revised 6-29-09.
 - Chipotle Mexican Grill Floor Plan Prelim Plan dated 08 June 2009 by HBC Architects. (The Commission notes that modifications may need to be made to this floor plan by the Fire Marshal and/or the Darien Health Department to meet local codes).

An eight foot high (8') solid wooden fence shall be placed along the shared property line with the property to the north, generally along the zone boundary line between the SB-E Zone and the R-1/2 Zone. Such a fence is specifically allowed per the Darien Zoning Regulations. Although the neighbor to the north requested a higher fence, the eight foot fence is the largest allowed without a variance from the Zoning Board of Appeals. It is crucial that the property owner and business operator properly maintain the required buffer area and respect the fact that the buffer area is to protect the single family residential zone to the north and is not to be used or misused for any activity whatsoever. The applicant's choice to construct an addition to the building in the location of the previously approved drive through lane will preclude this building from having a drive through lane in the future because the drive through lane cannot pass through the required buffer area.
- B. All landscaping shall be installed per the submitted Landscape Plan referenced in Condition A, above and the plans previously approved by the Planning & Zoning Commission as part of Business Site Plan #256/Special Permit. Any changes or substitutions must be approved in writing by the Planning and Zoning Commission prior to implementation.
- C. The submitted plans show two undersized parking spaces numbered 19 and 20 to the west side of the proposed addition. Because those two spaces do not conform to the dimensional requirements of the Zoning Regulations, they cannot be counted towards parking. Those shall be removed from the plans. The plans also show spaces 16, 17 and 18 on the east side of the building. As designed, one of those spaces does not comply with the Regulations. One way to resolve this would be to eliminate space 17 and move space 18 three feet to the west. Revised plans shall be submitted reflecting these changes to conforming parking spaces. Thus, 17

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conforming spaces will be on the subject property, and three on the adjacent property at 93 Boston Post Road. This is the same number approved as part of the previous approval in July 2008.

- D. The subject property is part of a shared parking agreement under Section 905 of the Darien Zoning Regulations. Because of that, no parking spaces shown on the approved plans can be reserved for customers, the upstairs residential tenant and their guests, or restaurant employees. All spaces must be available for any of the on-site uses at all times.
- E. Because of the nature of the proposed use, the Commission hereby waives the requirement for a standard loading zone as authorized by Section 909 of the Darien Zoning Regulations. The loading and unloading of supplies shall be conducted only while trucks are in the paved area adjacent to the refuse enclosure area on the west side of the building. Trucks are not permitted to be parked on the street or in the parking lot aisle area during loading or unloading. Any future change in uses may require a loading zone in the future.
- F. The July 21, 2009 letter from Amy Zabetakis to the Commission referred to during the public hearing notes that the proposed hours of operation would be a maximum of 11am to 10pm. Staff would arrive possibly as early as 8am and leave as late as 11pm. Due to the fact that this property is directly adjacent to a residential zone, the Commission limits the hours of operation to those represented within that letter. The maximum number of customer seats within the building shall be 33, and the maximum number of customer seats outside the building shall be 16. Any modification in the future requires review and action by the Planning and Zoning Commission.
- G. To avoid early morning or late night trash pick up that would unreasonably disturb the immediately adjacent residential area, garbage pickup shall be done on an "as-needed" basis, and shall occur only between the hours of 10am-12 noon, or from 1pm to 5pm. (This is the same condition as the prior approval).
- H. The Dumpster enclosure area shall be neatly maintained, and the doors shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors. It is imperative that the doors remain shut when not in use. Access to the dumpster area will utilize the connecting driveway with the 93 Boston Post Road site. After review and action by the Director of Planning and Town Counsel, and prior to the issuance of a Zoning or Building Permit for construction of the new building, the proper easements and agreements for both sites for access/egress and joint parking use must be filed in the Darien Land Records
- I. The previous restaurant use at this site, IHOP, generated parking problems that included on street parking, parking on landscape areas and within the required buffer area, and other inappropriate and/or unsafe locations. This type of problem is not permitted to continue or reoccur. There shall be no parking of vehicles on West Norwalk Road or Boston Post Road or on landscape areas or the buffer area or other inappropriate and/or unsafe areas. If such parking does occur, the operators of the business must modify the manner in which they run the business so that the parking is accommodated in appropriate, approved parking spaces within the

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commercial project. Modifications of the business operations might include reducing the amount of outdoor seating, reducing the amount of indoor seating, creating more kitchen and food preparation area within the confines of the existing building and reducing the customer seating, and other changes as are necessary to correct the parking problem. If the tenant or property owner believes that additional parking may be needed, a subsequent application for an amendment to this approval will be required. The logical location for such additional parking would be at 93 Boston Post Road under expanded joint parking arrangements, properly approved as referred to in this resolution.

- J. In order to minimize odors, the Commission hereby requires that the exhaust system include the water wash grease trapping design and the charcoal filter design and that the exhaust come out from the roof and be pointed away from the Residential Zone. The property owner is responsible for assuring that the venting system functions properly at all times. The other details of the venting system shall be reviewed and acted upon by the Darien Health Department.
- K. All conditions of previous approval (Business Site Plan #256/Special Permit approved on July 1, 2008) are still in full force and effect, except where specifically modified or superseded herein.
- L. As-built drawings and certification shall be submitted by a professional engineer confirming that the required parking areas, drainage, and landscaping and all other site work for the project has been properly completed per the approved plans before any use of the building and prior to a Certificate of Occupancy for the use of any portion of the building is issued..
- M. Any request for signage will require further review and action by the Architectural Review Board. All signs for the proposed use must comply with the applicable Zoning Regulations, or with any variance obtained from the ZBA.
- N. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- O. The granting of this Business Site Plan and Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, final approval from the Darien Fire Marshal; final kitchen review by the Darien Health Department.
- P. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (September 1, 2010). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within sixty days of this approval or this permit shall become null and void.

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Mr. Conze read the following agenda item:

Land Filling & Regrading Application #228, Leo Van Munching, 41 Hancock Lane.
Proposing to replace the existing single-family residence with a new single-family residence and its associated regrading and stormwater management, and perform related site development activities.
HEARING CLOSED ON JULY 28, 2009. DECISION DEADLINE: OCTOBER 1, 2009.

The Commission members briefly discussed the draft Resolution. The following motion was made:
That the Commission adopt the following Resolution to approve the application subject to the conditions and stipulations as noted. The motion was made by Mr. Spain, seconded by Mrs. Grimes. All voted in favor of the motion except Mrs. Riccardo who abstained.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Land Filling & Regrading Application #228

Street Address: 41 Hancock Lane
Assessor's Map #2 Lot #76

Name and Address of Applicant & Property Owner Leo Van Munching
800 Hollow Tree Ridge Road
Darien, CT 06820

Name and Address of Applicant's Representative: Dan Conlon
Daniel Conlon Architects
4 Old Mill Road
Georgetown, CT 06829

Activity Being Applied For: Proposing to replace the existing single-family residence with a new single-family residence and its associated regrading and stormwater management, and perform related site development activities.

Property Location: The subject property is located on the north side of Hancock Lane approximately 1,000 feet east of its intersection with Hollow Tree Ridge Road.

Zone: R-2

Date of Public Hearing: July 28, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: July 16 & 23, 2009

Newspaper: Darien News-Review

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Date of Action: September 1, 2009

Action: APPROVED WITH
CONDITIONS

Scheduled Date of Publication of Action:
September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to replace a prior existing single-family residence with a new single-family residence and its associated regrading and stormwater management, and perform related site development activities. This proposed filling and regrading is more than 25 feet away from the proposed residence and within fifteen feet of a property line. The proposed residence will be served by a private well and an on-site septic system.
2. At the July 28, 2009 public hearing, the applicant noted that a "Stormwater Runoff Calculations" report was prepared by professional engineer Robert Oley of Land-Tech Consultants, Inc., on behalf of the applicant. The submitted plans, includes 182 linear feet of 26.5 inch high Cultec "Recharger 280" units. The stormwater report notes that the rate of post development volume of stormwater runoff from the site is less than the pre-development volume in all storms from the 1 year to the 100 year storm.
3. The Commission notes with respect to the drainage system around the house, the need for the applicants to file a document outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
4. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
5. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

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NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #228 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission:
- Site Development Plan, Including Grading and Storm Drainage Maganement (sic) and Soil Erosion and Sedimentation Control Plan, by Land-Tech Consultants, Inc., scale 1"=20', last revised 6/2/09, Sheet 1 of 2.
 - Details and Notes, by Land-Tech Consultants, Inc., scale 1"=20', last revised 6/2/09, Sheet 2 of 2.

Although specific house plans (Sheets A1.1 through A1.5 and A2.1 through A2.2) and a landscape planting plan (Sheet L1.2) were submitted with the application, those plans are not part of the Commission's specific approval for filling and regrading, and thus, those plans can be modified, as long as they are not inconsistent with this decision, affect the size of the required septic system, or affect the filling and regrading on the property.

- B. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond. Upon completion of the work, the applicant shall provide written verification and photographs documenting the completion of the project, including the grading and the drainage work, in compliance with the approved plans.
- C. During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restablilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. The applicant shall install the drainage system as shown on the submitted plans in Condition A, above. The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- E. By November 1, 2009 (within the next 60 days) a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department and/or the Darien Land Records. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 41 Hancock Lane to maintain the on-site drainage facilities, and will alert future property owners of

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the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.

- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to a street opening permit from the Public Works Department, and a final approval from the Darien Health Department for the septic system.
- H. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (September 1, 2010). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the start of any filling or regrading work, or this approval shall become null and void.

Mr. Conze read the following agenda item:

Coastal Site Plan Review #213-B, Flood Damage Prevention Application #248-A, Mr. & Mrs. Paul P. Huffard, IV, 20 Juniper Road. Proposing to construct a pier, ramp, and float, and perform related site development activities within regulated areas. *DECISION DEADLINE: OCTOBER 1, 2009.*

The Commission members briefly discussed the draft Resolution. The following motion was made: That the Commission adopt the following Resolution to approve the application subject to the conditions and stipulations as noted. The motion was made by Mrs. Grimes and seconded by Mr. Bigelow. All voted in favor except Mrs. Riccardo who abstained.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 1, 2009**

Application Number: Coastal Site Plan Review #213-B
Flood Damage Prevention Application #248-A

Street Address: 20 Juniper Road
Assessor's Map #57 Lot #12-1

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Name and Address of
Applicant's Representative: D. Bruce Hill, Esq.
Law Office of Bruce Hill, LLC
23 Old King's Highway South
Darien, CT 06820

Name and Address of Property Owner:
And Applicant: Mr. & Mrs. Paul P. Huffard, IV
20 Juniper Road
Darien, CT 06820

Activity Being Applied For: Proposing to construct a pier, ramp, and float, and perform related site development activities within regulated areas.

Property Location: The subject property is on the north side of Juniper Road, approximately 1200 feet east of its intersection with Nearwater Lane.

Zone: R-1 Zone

Date of Public Hearing: July 28, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: July 16 & 23, 2009

Newspaper: Darien News-Review

Date of Action: September 1, 2009

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
September 10, 2009

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 810, 820 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

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1. The owner proposes to construct a steel and timber 4' x 80' long fixed pier with a 3' x 32' aluminum ramp and 8' x 12.5' floating dock and perform related site development activities within regulated areas.
2. As noted at the public hearing, in 2009, this dock has received approval from the State of Connecticut Department of Environmental Protection (DEP).
3. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.
5. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
6. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
7. The potential adverse impacts of the proposed activity, as modified within this resolution, on coastal resources are acceptable.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #213-B and Flood Damage Prevention Application #248-A are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the plans entitled:
 - Huffard Residence Residential Pier, Ramp & Float Goodwives River, by Roberge Associates Coastal Engineers, LLC, Sheets 2 and 3 last revised 05-06-08, Sheets 4-5 last revised 3-05-09, Sheet 5A dated 03-23-09.
- B. The proposed activity is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.
- C. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized. Prior to the

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completion and/or occupancy of the house, all approved site work must be completed and the disturbed areas are to be stabilized with appropriate vegetation.

- D. Prior to September 1, 2011, as-built maps, surveys and/or other documentation shall be submitted to the Commission to verify that the dock has been installed and completed in accordance with the approved plans. No deviation or alterations from the approved plans shall be permitted except with the prior written permission of the Commission.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- G. This permit shall be subject to the provisions of Section 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (September 1, 2010). This may be extended as per Section 829f.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman.

Mr. Conze read the following agenda item:

Flood Damage Prevention Application #273, Dennis Kopec, 25 Cherry Street. Proposing to elevate the existing residence and perform related site development activities within a regulated area. The subject property is located on the south side of Cherry Street, approximately 30 feet east of its intersection with Ash Street, and is shown on Assessor's Map #41 as Lot #55 in the R-1/3 Zone.

Mr. Ginsberg explained that this is one of the properties that is located in the Flood Hazard Zone. The applicant plans to pick up and elevate the house so that the first floor will be well above the expected flood level. Normally this requires a public hearing, but in this case, the applicant has obtained the signature of all the adjacent neighbors so that the Commission has, under the provisions of the Zoning Regulations, the authority to waive the normal public hearing process. Mr. Ginsberg explained that the applicants' engineer was present to answer any questions about the proposed design to elevate the house. Mr. Ginsberg said the only site modification will be the need for additional stairs to reach from the existing ground level up to the proposed new first floor level. There will be no regrading of the property.

Peter Cloudas, Professional Engineer, said that the Kopecs plan to raise their house four feet higher than the existing condition because they have experienced flooding in the past. He said that the extent of the flooding and the elevation of the flooding has been greater than the calculated flooding as shown on the Flood Insurance Map, and therefore they will be raising the house well above the expected flood level. He said that the foundation has been designed to withstand the pressure of

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flood waters and the foundation will include flood gates to equalize the pressure on the inside and outside of the structure. He noted that the height of the crawl space will be less than 5 feet in order to comply with the Flood Damage Prevention Regulations.

Chairman Conze read the following agenda item:

Flood Damage Prevention Application #274, Steven & Joan Yurman, 29 Cherry Street. Proposing to elevate the existing residence and perform related site development activities within a regulated area. The subject property is located on the south side of Cherry Street, approximately 130 feet east of its intersection with Ash Street, and is shown on Assessor's Map #41 as Lot #53 in the R-1/3 Zone.

Mr. Ginsberg explained that this is a similar situation with the house in the flood zone and applicant has obtained signatures from the neighboring property owners in the hopes that the Planning & Zoning Commission would waive the public hearing and grant the approval in an expedited manner. Peter Cloudas, Professional Engineer, spoke on behalf of the applicant and explained that the house and deck will both be raised so that they will no longer be susceptible to flood damage. The only noticeable change at the site will be the increase in the number of stairs leading from the ground to the first floor. Mr. Cloudas said that he will be observing the construction work as it takes place and will provide the usual final certification letter to verify that all work has been performed in accordance with the Flood Damage Prevention Regulations and the approval granted by the Planning & Zoning Commission. He said that there will be no change in the grade other than a slight regrading right around the building to make sure that regular rain water flows away from the foundation. He explained that the Yurmans will utilize the same contractor as the Kopecs who live on the adjacent property.

The following motion was made: That the Planning & Zoning Commission waive the public hearing for each of the two applications and approve with the normal conditions and stipulations for work in the Flood Hazard Zone, both Flood Damage Application #273 for Dennis Kopec at 25 Cherry Street and Flood Damage Prevention Application #274 for Steven and Joan Yurman at 29 Cherry Street. The motion was made by Mr. Spain and seconded by Mr. Hutchison. All voted in favor of the application.

Chairman Conze read the following application:

Discussion and deliberation only on one item (if public hearing has been closed):

Special Permit Application #170-B/Site Plan, Tasti D-Lite, Noroton Heights Shopping Center, 380 Heights Road. Proposing to establish an ice cream shop within the northernmost space within the existing building and place two associated outdoor tables and eight outdoor chairs. The subject property is located on the north side of Heights Road approximately 185 feet east of its intersection with Hollow Tree Ridge Road, and is shown on Assessor's Map #75 as Lots #22, #23, #24, in the DC Zone.

Mr. Ginsberg explained that the hearing had just been held tonight and he asked the Commission if they had any indication about whether he should draft a Resolution for an action at a future meeting. The Commission members felt a draft Resolution should be prepared and they will act on the application at a future meeting.

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Chairman Conze read the following agenda item:

Amendment of Business Site Plan #90-K, Pear Partners, LLC, 1077 Boston Post Road.

Request for a new retail tenant in a portion of the first floor space.

Commission members reviewed the letter regarding the proposed tenant, Joseph A. Bank clothing store to take some of the first floor space that will become available. The following motion was made: That the Commission approve the proposed Joseph A. Bank Clothing Store tenant on a portion of the first floor in accordance with the submitted request. The motion was made by Mr. Spain, seconded by Mr. Bigelow and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #124-F, Dolcetti, Inc., 975-987 Boston Post Road,
Business Site Plan #136-B, Daniel & Philip Dolcetti, 2 Squab Lane, CBD Zone.

- 1) Proposal for new tenant at 979 Boston Post Road—Artifacts Lanier Collections.
- 2) Request for extension of time to commence 2 Squab Lane project.
- 3) Request for extension of time to construct monumental stair plaza.

Mr. Hutchison left the meeting because he wanted to avoid any perception of a conflict of interest.

Mr. Ginsberg said that there are three aspects to the request: the first is a proposed new tenant at 979 Boston Post Road. That tenant would be Artifacts Lanier Collections which will be an art showroom and sales area. The second aspect of the request is an extension of time to commence construction on the proposed new building at 2 Squab Lane. The third aspect of the request is an extension of time to construct the monumental stair plaza that would connect the existing parking lot adjacent to the train station with the subject properties.

Mr. Spain said that a key inducement for the approval of this project was the stairway connecting the railroad station parking lot to the subject properties. He felt that granting the extension of time for the commencement of the 2 Squab Lane project would be acceptable and granting an extension of time for the completion of the stairway within one year would be okay, but if any further extension of time is needed, then a date certain would be required for the completion of the stairway. Mr. Conze noted that there are places on and adjacent to the site where the weeds have gotten out of control and the owner should correct that problem. None of the Commission members expressed any concern or problem with the proposed tenant. After further discussion, the following motion was made: That the Commission approve the Artifacts Lanier Collections as a tenant of the property and grant an extension until September of 2010 to commence construction on the new building at 2 Squab Lane and grant an extension of time to complete the stairway construction until September of 2010 and note that if any further extensions are requested in the future, a date certain for completion of the stairway would be necessary. The motion was made by Mr. Bigelow, seconded by Mr. Spain. All the Commission members present voted in favor of the motion (Mr. Hutchison was not present and therefore did not vote on this matter). Voting in favor were Bigelow, Spain, Grimes, Conze and Riccardo.

Mr. Hutchison returned to the meeting and Chairman Conze read the following agenda item:

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Business Site Plan #257, Chase Bank, Noroton Avenue/Heights Road.

Update on status of project.

Mr. Keating indicated that the contractor had noted that several of the large trees on and adjacent to the property would be adversely impacted by the extensive regrading and excavation work. They have therefore submitted a revised landscaping plan that has been reviewed with the neighbors and administratively approved. At one point, the applicant had discussed reducing the length or extent of the retaining walls along the westerly property line, but that would have required regrading into the neighbors property. That adjacent neighbor had indicated that they would not grant permission for the regrading to extend into their property and therefore the request to modify the retaining walls was dropped. Mr. Spain said that the applicant should be reminded about the possibility of adding additional galleries or underground drainage depending on the soil conditions when they excavated.

Chairman Conze read the following agenda item:

Amendment of Land Filling & Regrading Application #145-B, Sykes, 5 Homewood Lane.

Request to modify filling & regrading to accommodate changes to the pool house.

Commission members noted the revised plan and grading adjacent to the proposed pool house. They also noted that the pool house would be slightly larger than the plan that had been approved. After reviewing the minutes, the following motion was made: That the Commission approve the revised plans for the regrading and construction activity at the Sykes property. The motion was made by Mr. Spain, seconded by Mrs. Grimes and unanimously approved.

Approval of Minutes

Minutes of June 23, 2009 General Meeting/Public Hearing

A motion was made to approve the minutes. The motion was made by Mr. Spain, seconded by Mr. Hutchison. Voting in favor were Mr. Spain, Hutchison and Conze. Other members abstained because they had not been present at the meeting.

Minutes of July 13, 2009 Special Meeting

A motion to approve the minutes was made by Mr. Hutchison and seconded by Mr. Bigelow. Voting in favor of the motion were Mr. Conze, Bigelow, Spain and Hutchison. Other members abstained because they had not be presented on July 13.

Minutes of July 28, 2009 Public Hearing/General Meeting

A motion was made to adopt the minutes. The motion was made by Mrs. Grimes and seconded by Mr. Spain. Voting in favor were Mrs. Grimes and Mr. Bigelow, Mr. Conze and Mr. Spain. The other members abstained because they were not present on July 28th.

There being no further business, the meeting was adjourned at 9:30 P.M.

Respectfully submitted,

David Keating
Assistant Planning & Zoning Director